IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.1574 (SS) OF 2004

Ashok Shah,
S/o late Shri Suresh Chandra Shah,
R/o Village Gaithiya,
District- Nainital. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary, Ministry of Finance, Uttaranchal, Dehradun.
2. Additional Director Treasury and Pension, Kumaum Mandal Haldwani, District- Nainital.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sir Vikas Pandey, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to pay the amount of gratuity of the deceased to the petitioner along with the interest @ 18% per annum, from the date of gratuity accrued to the petitioner.

3. Briefly stated, the real brother of the petitioner namely Sri Anil Kumar Shah was working as Lecturer (Biology) in Government Inter College, Betalghat, District Nainital. He died issueless and therefore, the petitioner filed a succession suit being Succession Suit No. 52 of 2001 before the

Civil Judge (Senior Division), FTC VI Nainital claiming the due of the deceased.

4. The succession case No. 52 of 2001 was decided on 17.10.2001 in favour of the petitioner as Sri Ajai Shah had no objection in respect of the dues payable to the petitioner too.

5. After the succession certificated issued in respect of debts left by the deceased in favour o f the petitioner, all the dues except gratuity was given to the petitioner.

6. The petitioner duly applied for the payment of gratuity of his brother late Anil Shah before the respondent no. 2., but vide letter No. 1568 dated 32.01.2002 the claim of the petitioner for the amount of gratuity was rejected on the ground that the petitioner does not come within the definition of family.

7. Counsel for the petitioner has submitted that the reason given by the respondent no. 2 is wrong as gratuity is not bound to be paid by the State Government, but it is a right of an employee and thereafter right to his successor and further the gratuity cannot be denied without any reason and therefore, the petitioner has a legal fundamental right for gratuity.

8. Petitioner has submitted that after rejection of the claim fro gratuity, he moved several representations before the respondent no. 2 and he has moved last representation on 02.09.2004 for payment of gratuity.

9. A counter affidavit has been filed, where in paragraph 10, it has been mentioned that the petitioner is not entitled for getting the amount of gratuity of late Anil Kumar

Shah as he is more than 18 years of age and the application of the petitioner was rightly rejected by the answering respondent.

7. However, since the impugned claim has rightly been rejected, writ petition lacks merit and is dismissed.

(Rajesh Tandon, J.)

25.08.2006
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